

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CF 135 FLAT LLC, CF 135 WEST MEMBER  
LLC and THE CHETRIT GROUP, LLC,

Interpleader Plaintiffs,

-against-

TRIADOU SPV S.A., CITY OF ALMATY, a  
foreign city, and BTA BANK JSC,

Interpleader Defendants.

15 Civ. 5345 (AJN) (SN)

CITY OF ALMATY, KAZAKHSTAN and BTA  
BANK JSC,

Crossclaim Plaintiffs,

-against-

MUKHTAR ABLYAZOV, VIKTOR  
KHRAPUNOV, ILYAS KHRAPUNOV, and  
TRIADOU SPV S.A.,

Crossclaim Defendants.

**AFFIDAVIT OF MATTHEW MELTSNER**

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

Matthew Meltsner, being duly sworn, deposes and states under penalty of perjury:

1. I am currently the Project Manager for 135 West 52nd Street Owner, LLC. which is the fee owner (the "Fee Owner") of the real property located at 135 West 52nd Street, New York, New York ("the Flatotel").

2. I have held the position of Project Manager for the Flatotel for nearly three years, throughout the project's development.

3. The Flatotel project, which I currently oversee, involves the conversion of a former hotel into a commercial component and retail component and condominium apartments.

4. When the Fee Owner first acquired the property in 2013, the building located thereon was vacant.

5. When construction is complete, the Flatotel project will be a 46-story tower consisting of retail space on the ground floor, six floors of office space (ground floor lobby, and forty floors of luxury residential units. As described below, some of the residential units have already been sold, the commercial condominium was sold, and the retail space is in contract and will soon house a BLT restaurant.

6. As Project Manager, I interface on a daily basis with the many contractors, engineers, architects, and consultants that are continuing to work on the project. I also speak daily with the brokers and marketing specialists responsible for sales of units in the Flatotel. Overall, my job is to ensure that the project continues on schedule so that units in the Flatotel can be sold, closed upon, and occupied. As part of my work, I speak with, and report to, Chetrit on a regular basis, and with David Bistricher somewhat less frequently. Mr. Chetrit approves all major expenditures or change orders on the project.

7. Deutsche Bank ("the Lender") held a mortgage on the Flatotel ("the Mortgage") that was continuously paid down with proceeds from closings of units in the Flatotel. That debt on the project, which was initially approximately \$228 million, has now been retired through the payment of funds from closings. Prior to the satisfaction of the project debt, as units in the Flatotel closed, all funds after fees and commissions were transferred by the condominium attorneys, Rosen Livingston & Cholst, LLP ("Rosen Livingston"), to a lockbox fund, which the Lender then drew on periodically to pay down the Mortgage. The Fee Owner did not have access

to this lockbox fund as per the loan documents.

7. In mid-April, 2016, there was approximately \$23 million in the Lender's lockbox. This amount exceeded the approximate \$21 million balance remaining on the Mortgage, and as such, on April 26, 2016, approximately \$1.9 million was released by the Lender to Rosen Livingston. Those funds have been earmarked by the Fee Owner to pay contractor and vendor invoices.

8. Because the Lender has certified that the Mortgage has been paid, funds from future closings will no longer be deposited in the lockbox, and should be used first toward completing the cost of construction of the project and paying other project-related expenses such as marketing costs. At this time, there are an estimated \$15 million in costs required to finish construction of the Flatotel and satisfy other payables; this figure is referred to as the "Balance to Finish." This amount includes direct expenditures expected, as well as contingency costs to ensure development is completed on schedule.

9. While this work is described as "finishing" in the industry, it involves major construction that is critical to the success of the project. At this time, the Flatotel has a "TCO," or Temporary Certificate of Occupancy from the New York City Department of Buildings. A TCO allows certain floors to be occupied while construction continues on other floors of the building and common areas and amenities are completed. At this time, floors below the 33rd floor may be occupied, but most of the units on floors 33 through 46 are not available for occupancy and have major work remaining to be done.

10. Construction is continuing on the Flatotel's common areas and amenities, and work is also needed on the exterior of the building completing the façade where the construction elevator was erected and matching that to the rest of the building's exterior. The elevator repair

work consists of an area approximately 15 feet wide, running the entire height of the building, from the ground to the 46th floor, and must be completed. Funds for completing this significant construction are one part of the estimated Balance to Finish.

11. The Balance to Finish will also be used to complete interior work on units which have yet to be listed for sale. At this time, there are approximately 21 units remaining to be sold, including the super's unit and including many of the largest and most expensive upper-floor units. In total, at their offering price set forth in the offering plan, these unsold units represent an estimated \$144 million in gross revenue prior to costs of sale. (To date, the units that have sold in the project have typically sold at approximately the asking price). Many of these upper floor units need extensive internal finishing, including glass shaping and installation, staircase construction and installation, tiling and flooring, appliances and installation, and lighting fixtures. Much of this is intricate work that must be done by particularly skilled craftspeople to meet the standards of buyers for these types of units, some of which will be marketed for in excess of \$8-10 million. The Balance to Finish represents the estimated costs of paying for construction crews and artisans to complete this work on time so that these units may be finished and sold on schedule.

12. Additional work is also needed on units in contract and scheduled to close, but which have not yet closed. At this time, there are approximately six such units including the retail unit, which represent approximately \$34 million in gross sales revenue, less brokers' fees and other costs. Before a buyer closes on a unit, they conduct a walkthrough of the unit and create a "punch list" of changes and corrections to be completed before any closing. While these changes are often minor in scale compared to the project itself, they are very personal to the buyer and in my experience are often the subject of significant negotiations and discussions. Part

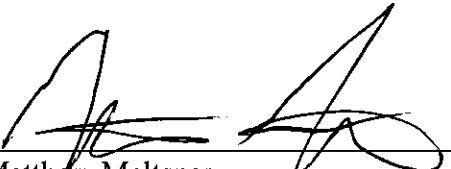
of the Balance to Finish represents costs of materials and contractors' charges related to these punch list items, which can be difficult to estimate prior to consultation with each buyer.

13. The Balance to Finish also covers retention of independent consultants and engineers to ensure that the Flatotel passes all inspections. Because the building only has a TCO at this time, numerous inspections remain before the building is issued its permanent Certificate of Occupancy from the Department of Buildings. To ensure that these detail-intensive inspections are passed, and the project can remain on schedule and buyers can move into upper floors, numerous independent consultants and engineers have been retained who must continue to be paid in a timely manner. Part of the Balance to Finish represents the costs of these experts and ensuring that the project continues to pass inspections and stay on schedule.

14. Failure to prioritize and timely pay the Balance to Finish would disrupt closings of units and interfere with future sales, potentially delaying the completion of the Flatotel project. The closing proceeds should be used to pay contractors and consultants critical to both scheduled closings and the completion of the building generally. The Balance to Finish must be paid promptly as these costs come due, or the Flatotel project risks delay. If final construction cannot be completed, then units will not be available to close. Equally important, if funds are not available to meet buyers' punch lists on units that are scheduled to close, then those closing are likely to be delayed. Construction teams will not work without payment, or at best, will work only on a reduced schedule, thus further pushing back completion. Similarly, inspections will have to be delayed as construction slows down, limiting the ability to show and sell high-value upper-floor units. Without the ability to promptly make payments needed to satisfy the Balance to Finish, work will slow down and push the project off schedule. Particularly as the high-end

condominium market has showed signs of weakening, these kinds of delays could deter buyers and further disrupt sales in the project.

15. In short, the Flatotel is a \$300-plus million project that is in the midst of active construction and marketing. As Project Manager with a long history and understanding of this project, I make most managerial decisions and often approve vendor payments with respect to ongoing work, although for significant decisions and payments, I do so in consultation with Chetrit. Any delay in payments would cause great harm to the completion of the project, as described above. If someone unfamiliar with the project were empowered to make payment decisions, it would take weeks for that person simply to get up to speed on the detailed status of the project. That person would be unfamiliar with our construction crews, craftspeople, architects, consultants, vendors, and other professionals. Under such a scenario, even if the current project managers and I continued to have complete control over the development and operations of the project, there would necessarily be a significant delay, likely of at least several weeks, before the project could restore anything like normal operations. In that time, all of the consequences I described above would materialize, including delays in construction, sales, and marketing.



Matthew Meltsner

Sworn to before me on this  
3<sup>rd</sup> day of May, 2016

DAVID SALHANICK ESQ.  
Rochester County, NY  
# 0254029195  
ETD. 5/24/16